

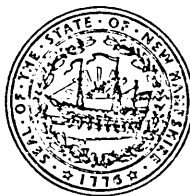
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March 26, 1984

Mr. David J. Power, Commissioner
Department of Revenue Administration
61 South Spring Street
Concord, New Hampshire 03301

Re: Taxation of Manufactured Housing

Dear Mr. Power:

You have asked whether "manufactured housing" as defined in RSA 674:31, as amended by Ch. 447:1, Laws of 1983, is to be considered real or personal property in applying property tax collection statutes. It is our opinion that "manufactured housing" as so defined has been classified as real estate for this purpose under the provisions of Ch. 230, Laws of 1983.

Ch. 230:4, Laws of 1983 amended RSA 31:118 defining "manufactured housing" to mean:

"any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein."



Although RSA 31:118 was repealed effective January 1, 1984 when Ch. 447, Laws of 1983 took effect recodifying the zoning laws, the above definition continues to appear as RSA 674:31. Ch. 230 simultaneously amended the definition of "real estate" as that phrase is generally to be used in New Hampshire statutes to include "manufactured housing" as defined by RSA 674:31. See RSA 21:21, II (Supp.).

The language of the definition of "manufactured housing" on its face indicates that a structure qualifies as "manufactured housing," whether or not it is permanently affixed to the land or connected to utilities, as long as it is of the requisite size, has a permanent chassis, and is "designed to be used as a dwelling ... when connected to required utilities" Since the definition describes a "structure, transportable in one or more sections" and "in a traveling mode," which is designed to be used as a dwelling unit "with or without a permanent foundation," the definition cannot logically be read to create "real estate" under RSA 21:21, II (Supp.) only when attached to utilities or permanently affixed to the land.

Other provisions in Ch. 230, Laws of 1983 support this view that "manufactured housing" is to be considered real estate generally, whether or not affixed to the land or tied into utilities. Section 7 of the act includes a provision which states that, for purposes of the real property transfer tax, manufactured housing will be deemed real estate at the time it is placed on the site and tied into required utilities. Section 14 of the act similarly provides that, for purposes of determining title to structures located on land owned by another, manufactured housing shall be deemed real estate when placed on the site and tied into utilities. Since no such provision was added to other statutory amendments effected by Ch. 230, including those to tax statutes governing property taxation of manufactured housing, we must assume that no similar limitation applies. Other provisions of the act thus now generally provide for homestead rights in manufactured housing and require any person who sells manufactured housing, unless otherwise exempt, to have a real estate broker's or seller's license. See, sections 13 and 15 of Ch. 230. In addition, mobile homes have been deleted from the definition of "goods and chattels" in the provisions of RSA Ch. 528 permitting levy of execution on personal property. Ch. 230:16 and 17.

With respect to tax collection procedures, RSA 80:19 (Supp. 1983) provides that

"[t]he real estate of every person or corporation shall be holden for all taxes assessed against the owner thereof; and all real estate to whomsoever assessed shall be holden for all taxes thereon. ..." (emphasis added)

As the clear effect and intent of Ch. 230 is to classify "manufactured housing" as real estate for all purposes, it follows that "manufactured housing" as defined in RSA 674:31 is subject to the tax collection procedures appropriate for real estate set forth in RSA 80:18 through 80:26. You have pointed out that the definition of "manufactured housing" has also been inserted by Ch. 230:18, Laws of 1983 into a number of other tax statutes replacing the words "mobile home," "house trailer," "travel trailer" or "trailer," and that mobile homes have normally been taxed as personal property under these statutes. These property tax statutes include RSA 72:7-a, RSA 72:7-b, RSA 73:16-a and RSA 75:4. However, the characterization of "manufactured housing" as real estate should have no effect on the continued direct application of these statutes dealing specifically with tax collection procedures as to manufactured housing.

RSA Ch. 72 generally states which persons and property are subject to local property taxation. Thus, "manufactured housing" is made specifically subject to tax under RSA 72:7-a and 72:7-b and, while otherwise taxable as real estate and subject to tax collection procedures available for real estate, is also subject to the tax procedures and to the special lien created in these sections. It should be noted that these sections expressly exclude manufactured housing registered in this State for touring or pleasure and not remaining in any one place for more than 45 days and manufactured housing held for sale or storage by an agent or dealer. With these exceptions, these provisions fully apply on their face to "manufactured housing" as defined in RSA 674:31. Similarly, RSA Ch. 73 generally defines where, and to whom, taxable property, whether real or personal, is to be taxed. RSA 73:16-a, which again includes specific provision for manufactured housing, establishes a special procedure for taxing such structures when located on land owned by others. Although the provision applies by its terms to "personal property," and appears to include manufactured housing in that category, it is our view that the legislature did not intend to classify manufactured housing as personal property merely by inserting it into this provision when, from all other indications in Ch. 230, manufactured housing is now considered real estate for all purposes. Although RSA 73:16-a continues to refer to the property covered

as "personal," we believe the section may be applied to manufactured housing, an application clearly intended by the legislature as such housing may often be located on land owned by another, although it is otherwise to be treated as real estate for tax and other purposes. See also RSA 80:2-a, as inserted by Ch. 230:9, Laws of 1983.

Finally, RSA 75:4 simply provides that "manufactured housing" is to be inventoried along with all other taxable property, real or personal.

You have also asked whether a constitutional problem is raised by the treatment of manufactured housing as real property because other real estate is not taxed on a pro-rata basis depending upon the date of construction. Because statutes are to be accorded a presumption of constitutionality, we respectfully decline in accordance with past practice to speculate by opinion upon a court's future view as to a constitutional challenge.

If you have further questions, please let me know.

Very truly yours,

Betsy S. Westgate

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Assistant Attorney General
Division of Legal Counsel

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